

RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

JUL 26 2013

CLERK, U.S. DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS, MONTANA

JOEL T. STEINMETZ,

Plaintiff,

vs.

U.S. POSTAL SERVICE ("USPS"),
POSTMASTER GENERAL PATRICK R.
DONAHOE, and agents or participants,

Defendant.

Cause No. _____

MIXED CASE COMPLAINT

Jury Trial Demanded (X)
Jury Trial Not Demanded

DATE: July 26, 2013

INSTRUCTIONS

1. Use this form to file a civil complaint with the United States District Court for the District of Montana. Include only counts/causes of action and facts – not legal arguments or citations. You may attach additional pages where necessary. Your complaint must be typed or legibly handwritten in ink and on white paper. Write on only one side of the paper.

Do not use highlighters and do not staple or otherwise bind your papers. All pleadings and other papers submitted for filing must be on 8 ½" x 11" paper (letter size). You must sign the complaint (see page 8). Your signature need not be notarized but it must be an original and not a copy. The Clerk's Office cannot provide you copies of documents in your file without prepayment of \$0.10 per page (for documents electronically available) or \$0.50 (for documents not electronically available). Please keep a copy of the documents you send to the Court.

2. The filing fee for a complaint is \$350.00. This amount is set by Congress and cannot be changed by the Court. If you pay the filing fee, you will be responsible for serving the complaint on each defendant and any costs associated with such service.

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3. If you are unable to prepay the entire filing fee and service costs for this action, you may file a motion to proceed in forma pauperis. If you are a prisoner and your motion to proceed in forma pauperis is granted, the Court will assess an initial partial filing fee equal to 20% of the average monthly deposits to your prison account for the six months immediately preceding the filing of the action, or 20% of the average monthly balance in your prison account for the same six month period, whichever is greater. Thereafter, the balance of the filing fee will be collected in installments equal to 20% of your preceding month's income any time the amount in your account exceeds \$10.00. You will be required to continue making these payments even if your complaint is dismissed.
4. Complaints submitted by persons proceeding in forma pauperis and complaints submitted by prisoners suing a governmental entity or employee must be reviewed by the Court before the defendants are required to answer. See 28 U.S.C. §§ 1915(e)(2), 1915A(a); 42 U.S.C. § 1997e(c). The Court will dismiss your complaint before it is served on the defendants if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief may be granted; or (4) you sue a defendant for money damages and that defendant is immune from liability for money damages.

After the Court completes the review process, you will receive an Order explaining the findings and any further action you may or must take. The review process may take a few months; each case receives the judge's individual attention. Plaintiffs should not serve defendants, pursue discovery, or request entry of default judgment prior to the completion of this review process.

5. Prisoners who have had three or more cases dismissed as frivolous, malicious, or failing to state a claim upon which relief may be granted (strikes) will not be permitted to file any further civil actions without prepaying the filing fee unless they are in imminent danger of serious harm. See 28 U.S.C. § 1915(g).
6. Prisoners may not maintain more than two civil actions in forma pauperis at one time, unless the prisoner shows that he or she is under imminent danger of serious physical injury.
7. The case caption (page 1 of this form) must indicate the proper Division for filing. The proper Division is where the alleged wrong(s) occurred. When you have completed your complaint, mail the *original* of your complaint and either the full filing fee or your motion to proceed in forma pauperis to the proper Division:

Billings Division: *Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Park, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux, and Yellowstone Counties*

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**U.S. District Court Clerk, James F. Battin Courthouse,
2601 2nd Avenue North, Suite 1200, Billings, MT 59101**

Butte Division: *Beaverhead, Deer Lodge, Gallatin, Madison, and Silver Bow Counties*

**U.S. District Court Clerk, Mike Mansfield Courthouse, 400 N. Main,
Butte, MT 59701**

Great Falls Division: *Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith
Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton,
Toole, and Valley Counties* (Crossroads Correctional Center is
located in Toole County and all claims arising at CCC should be
filed in Great Falls)

**U.S. District Court Clerk, Missouri River Courthouse, 125 Central Ave. West,
Great Falls, MT 59404**

Helena Division: *Broadwater, Jefferson, Lewis & Clark, Meagher, and Powell Counties*
(Montana State Prison is located in Powell County and all claims arising at
MSP should be filed in Helena)

**U.S. District Court Clerk, Paul G. Hatfield Courthouse, 901 Front St., Ste 2100,
Helena, MT 59626**

Missoula Division: *Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders
Counties*

**U.S. District Court Clerk, Russell Smith Courthouse, P.O. Box 8537,
Missoula, MT 59807**

COMPLAINT

I. PLACE OF CONFINEMENT

A. Are you incarcerated? Yes No (X) (if No, go to Part II)

B. If yes, where are you currently incarcerated? N/A

**C. If any of the incidents giving rise to your complaint occurred in a different facility, list
that facility:** N/A

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II. JURISDICTION

Jurisdiction is asserted under (CHECK ANY THAT APPLY):

- 28 U.S.C. § 1331 because it raises a civil rights claim against a state or local government employee or entity under 42 U.S.C. § 1983
- 28 U.S.C. § 1331 because it raises a claim against a federal employee under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)
- 28 U.S.C. § 1332 (diversity) because all the defendants live in a different state than plaintiff

If you wish to assert jurisdiction claim under different statutes, list them below.

- Kloeckner v. Solis*, 133 S. Ct. 596, 184 L. Ed. 2d 433 (December, 2012)
- Conforto v. Merit Systems Protection Board*, 713 F.3d 1111, 1117-18 (Fed. Cir. 2013)
- Cunningham v. Department of the Army*, 119 M.S.P.R. 147, ¶ 14 (2013)
- Civil Service Reform Act (“CSRA”) of 1978, 5 U.S.C. § 1101 *et seq.*
- Civil Rights Act of 1964
- Administrative Procedure Act (“APA”)
- Rehabilitation Act of 1973
- 5 U.S.C. § 7703(b)(2); § 7702
- Tort Claims Act

III. EXHAUSION OF ADMINISTRATIVE REMEDIES

A. Non-prisoners

1. Does any cause of action in this complaint require you to exhaust administrative remedies before filing in court?

Yes No Don't Know

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2. If yes, have you exhausted your administrative remedies?

Yes No N/A

B. Prisoners (If other institutions listed in I(C) above, answer for each institution).

1. Did you fully exhaust the administrative grievance process within the jail or prison where the incidents at issue occurred?

Yes No N/A

2. If you did not fully exhaust the grievance process, explain why:

N/A

(NOTE: Prisoners must exhaust their jail/prison's grievance process. Proper exhaustion requires compliance with the jail/prison's grievance deadlines and procedural rules.)

IV. PARTIES OF CURRENT LAWSUIT

- A. Plaintiff STEINMETZ is a citizen of MONTANA, presently residing at 3013 MYRTLE DRIVE in BILLINGS, MONTANA 59102.
- B. Defendant U.S. POSTAL SERVICE, is the FEDERAL EMPLOYING AGENCY, presently residing at 841 S. 26th STREET in BILLINGS, MONTANA 59101.
- C. Defendant(s) KNOWN AND UNKNOWN USPS AGENT(S) OR PARTICIPANT(S), are citizens of MONTANA AND OTHER STATES, presently residing at UNKNOWN ADDRESSES in BILLINGS, MONTANA AND OTHER STATES.

V. STATEMENT OF CLAIMS

A. Count I (State your clause of action, e.g., what constitutional rights have been violated):

- Count I. Violations of Fifth and Fourteenth Amendment Due Process Clause rights
- Count II. Violations of Federal Statutes
- Count III. Violation of Contract Law
- Count IV. Discrimination

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Dates of Incident(s):

1. **Supporting Facts:** (Include all facts you consider important, including names of persons involved, places, and dates. Describe what happened without citing legal arguments, cases, or statutes).

The U.S. Postal Service (“USPS”) breached a legal binding Americans with Disabilities Act (“ADA”) written and signed accommodations contract that allowed Mr. Steinmetz to continue working in his tenured federal job.

Mr. Steinmetz claims the USPS violated his Fifth and Fourteenth Amendment Due Process Clause rights by depriving him of property interest, as well as violated multiple federal statutes and contract law.

Mr. Steinmetz seeks to be reinstated, back pay and benefits, interest, damages, all costs incurred because of the USPS’s actions, immediate interim relief in the amount of \$50,000, and all other appropriate relief. Mr. Steinmetz requests to be made whole.

Mr. Steinmetz finally exhausted his last administrative process on July 3, 2013 and was provided a right to sue notice by the U.S. Merit Systems Protection Board. Plaintiff Complaint Tab 2.

BACKGROUND

As a tenured federal employee, Mr. Steinmetz incurred a compensable injury on August 24, 1998 and was found fully recovered by March 22, 1999.

On April 5, 1999 the U.S. Department of Labor Office of Workers’ Compensation Programs (“OWCP”) found that Mr. Steinmetz had fully recovered from his compensable injury on March 22, 1999 and that he could return to work immediately. Plaintiff Complaint Tab 3.

On April 28, 1999 OWCP issued OWCP Form CA 25-A stating “Claimant back to work full time.” Plaintiff Complaint Tab 4.

On April 30, 1999 OWCP commenced compensable payment to Mr. Steinmetz. Plaintiff Complaint Tab 5.

On May 18, 1999 the USPS offered Mr. Steinmetz an ADA accommodation position that listed specific disclosures (terms) of the contract. Plaintiff Complaint Tab 6.

Mr. Steinmetz unconditionally accepted and signed this accommodations contract on July 22, 1999 so that he could return to work immediately. Plaintiff Complaint Tab 7.

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Two days later, Mr. Steinmetz went back to work at the USPS on July 24, 1999 thus, ending the compensable claim and establishing that commencement of compensation began on April 30, 1999 and ended on July 23, 1999.

On August 25, 1999 the USPS breached the contract by removing Mr. Steinmetz from the ADA accommodation position without first providing a removal proposal notice. Plaintiff Complaint Tab 8.

The American Postal Workers' Union ("APWU") Local 132 refused to represent claiming the union had no authority to represent regarding a removal from an ADA accommodation employment position.

At this moment in time the USPS required Mr. Steinmetz to go through the administrative remedy processes without continued employment and without continued pay.

Mr. Steinmetz claims he is entitled to a new constitutionally correct removal process, that is to say, a demanded *de nova* trial and jury verdict.

Mr. Steinmetz requests a court-appointed lawyer qualified in federal employment law, see 5 U.S.C. § 7703(b)(2), and contract law and a waiver of any requirement of prepayment of fees, costs, or other security pursuant to 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a.

2. Defendants Involved: (List the name of each defendant involved in this claim and specifically describe what each defendant did or did not do to allegedly cause your injury).

The USPS and its agents and participants violated procedures and federal statutes when Mr. Steinmetz was improperly removed and specifically removed because of his ADA disabilities and protected activity status.

Mr. Steinmetz was not charged; was not removed for unacceptable performance; and was not removed for the efficiency of service.

Mr. Steinmetz was specifically removed because of his veteran and disability status; retaliated against because of his FECA, EEOC and union activity; and for unconditionally accepting the ADA accommodation position.

VI. INJURY

Describe the injuries you suffered as a result of each individual defendant's actions. (Do not cite legal arguments, cases, or statutes).

Mr. Steinmetz lost his tenured federal job; lost his retirement; lost his contribution into Social Security and Medicare when he gets older; lost his contributions into his 401K; lost his home; had to file for bankruptcy; lost possessions; was humiliated; had to endure embarrassment, ridicule, and emotional distress; and suffered indignity while exhausting his administrative remedy processes.

Mr. Steinmetz lost everything he had worked his entire life to attain and all because of the actions of the USPS's wrongful termination, discrimination, and reprisal.

(NOTE: If more space is needed to furnish the above information, continue on a blank sheet labeled "APPENDIX C: INJURY").

VII. REQUEST FOR RELIEF

Describe the relief you request. (Do not cite legal arguments, cases, or statutes).

Mr. Steinmetz request this court accept jurisdiction, determine the complaint timely, and determine Mr. Steinmetz has sufficiently established a *prima facie* case.

Mr. Steinmetz claims he is entitled to a new constitutionally correct removal proceeding; requests a demanded *de nova* trial and jury verdict; and to be made whole.

Mr. Steinmetz request this court issue an immediate order to the USPS to immediately reinstate; provide all back pay and benefits; provide interest; start paying a regular bi-weekly paycheck; place Mr. Steinmetz on "vacation pay status" in order to meet CBA provisions; provide any and all other appropriate remedies under law; and immediate interim relief in the amount of \$50,000 within 48-hours.

Mr. Steinmetz request representation by a court-appointed lawyer qualified in federal employment law including discrimination law, as well as contract law and to waive any requirements of a prepayment fee of the prepayment fee, costs, or other security. 42 U.S.C. § 2000e-5(f) and 29 U.S.C. § 794a." FAD, ¶ 17.

(NOTE: If more space is needed to furnish the above information, continue on a blank sheet labeled "APPENDIX D: REQUEST FOR RELIEF").

VIII. PLAINTIFF'S DECLARATION

- A. I understand I must keep the Court informed of my current mailing address and my failure to do so may result in dismissal of this Complaint without notice to me.
- B. I understand the Federal Rules of Civil Procedure prohibit litigants filing civil complaints from using certain information in documents submitted to the Court. In order to comply with these rules, I understand that:
 - Social security numbers, taxpayer identification numbers, and financial account numbers must include only the last four digits (e.g. xxx-xx-5271, xx-xxx5271, xxxxxxxx3567);
 - Birth dates must include the year of birth only (e.g. xx/xx/2001); and
 - Names of persons under the age of 18 must include initials only (e.g. L.K.).

If my documents (including exhibits) contain any of the above listed information, I understand it is my responsibility to black that information out before sending those documents to the Court.

I understand I am responsible for protecting the privacy of this information.

- C. I understand the submission of a false statement or answer to any question in this complaint may subject me to penalties for perjury. I declare under penalty of perjury that I am the Plaintiff in this action. I have read this complaint, and the information I set forth herein in true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.
- D. (Prisoners Only) This Complaint was deposited in the prison system for legal mail, postage prepaid or paid by the prison, on

Executed at _____ on _____, 20_____.
(Location) (Date)

Signature of Plaintiff

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CERTIFICATE OF SERVICE

I, JOEL T. STEINMETZ, do hereby certify that this COMPLAINT, before this court, was (were) served on the following entities in the following manner:

1. Hand-delivered

U.S. District Court Clerk
James F. Battin Courthouse
2601 2nd Avenue North, Suite 1200
Billings, MT 59101

2. Certified U.S. Mail
7012 0470 0000 8789 0432

U.S. Postal Service
Hon. Patrick R. Donahoe
475 L'Enfant Plaza SW
Washington, D.C. 20260-0004

DATE: 07/26/2013


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Joel T. Steinmetz

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AFFIDAVIT OF JOEL T. STEINMETZ

I, JOEL T. STEINMETZ, affirm under penalty of law (perjury) that the forgoing is true, correct, and to the best of my ability.

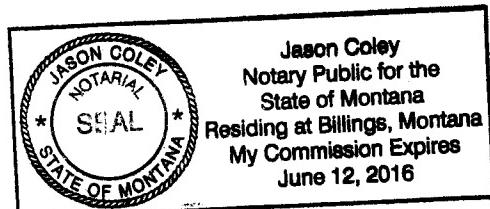
DATE: 07/26/2013

Joel T. Steinmetz
Joel T. Steinmetz

STATE OF MONTANA

City / County of BILLINGS / YELLOWSTONE

On this 26th day of July, 2013, before me, a Notary Public for the State of Montana, personally appeared JOEL T. STEINMETZ, known to me to be the person whose name is subscribed to the within instrument and acknowledge to me that he/she executed the same.



07-26-2013
Notary Public for the State of Montana

Residing at BILLINGS MONTANA

My Commission expires 6-12-2016

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